

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES

In the Matter of:

Millcreek Township	:	
and	:	Clean Streams Law
Millcreek Township	:	
Sewer Authority	:	

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 7th day of January, 1991, by and between the Commonwealth of Pennsylvania, Department of Environmental Resources ("Department"), Millcreek Township ("Township"), and the Millcreek Township Sewer Authority ("Authority").

Findings

The Department has found and determined the following findings which the Township and the Authority agree are true and correct.

A. The Department is the agency with the duty and authority to administer and enforce the Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §§691.1-691.1001 ("Clean Streams Law"); the Pennsylvania Sewage Facilities Act, Act of January 24, 1966, P.L. 1535, as amended, 35 P.S. §§750.1-750.20 ("Sewage Facilities Act"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. §510-17 ("Administrative Code"), and the rules and regulations promulgated thereunder.

B. The Township, organized and existing under the laws of the Commonwealth of Pennsylvania, maintains and operates the Millcreek Township sewage collection system. The mailing address of the Township is P. O. Box 8268, Erie, PA 16505.

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C. The Authority, a municipal authority formed pursuant to the Municipal Authorities Act, the Act of May 2, 1945, P.L. 382, as amended, 53 P.S. §301 et seq., owns the Township's sewage collection system which is located in the Township of Millcreek and leased to the Township. The mailing address of the Authority is P. O. Box 8332, Erie, PA 16505.

D. Sewage generated in Millcreek Township, and Townships tributary to Millcreek Township, is conveyed to the City of Erie's sewerage system through various points, including points tributary to the Kearsarge Pump Station. The wastewater is ultimately directed to the City of Erie's Wastewater Treatment Plant before being discharged into Lake Erie, a water of the Commonwealth.

E. On January 6, 1984, the Department issued Water Quality Management Permit No. 2583409 ("Part II Permit") to the Authority pursuant to the Clean Streams Law, 35 P.S. §691.1 et seq., which, inter alia, authorized the Authority to increase the pumping capacity of the Kearsarge Pump Station. The Part II Permit did not authorize the Authority to construct or use a bypass around the City of Erie's sewage treatment plant nor authorize any new discharge point to waters of the Commonwealth identified in the City of Erie's National Pollutant Discharge Elimination System ("NPDES") Permit.

F. On June 24, 1991, the Authority notified the Department that a bypass line had been constructed on December 7, 1988 at the Kearsarge Pump Station ("Kearsarge Bypass"). The letter also stated that the bypass had been used by the Authority on at least two (2) occasions. The Kearsarge Bypass discharged to Walnut Creek, a water of the Commonwealth, on March 6, 1991 for two (2) hours and in the fall of 1990 for approximately six (6) hours.

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Act, 35 P.S. §7514, the Administrative Agency Law, 2 Pa. C.S. 103(a), and Chapters 5A and 7A or any other provision of law.

FOR MILLCREEK TOWNSHIP:

Paul J. [Signature] 01/07/92
Name Date
Title Supervisor
[Signature] 01/07/92
Name Date
Title Supervisor
[Signature] 01/07/92
Name Date
Title Supervisor
[Signature] 01/07/92
Name Date
Attorney for the Township

FOR THE COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL RESOURCES:

David E. Milhous 1/10/92
Name Date
David E. Milhous, P.E.
Regional Water Quality Manager
Northwest Region
Bruce M. Herschlag 1/10/92
Name Date
Bruce M. Herschlag
Assistant Counsel

FOR THE MILLCREEK TOWNSHIP SEWER
AUTHORITY:

[Signature] 01/07/92
Name Date
Title Chairman
[Signature] 01/07/92
Name Date
Title Secretary
[Signature] 01/07/92
Name Date
Attorney for the Authority

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

MILLCREEK TOWNSHIP	:	
and	:	Clean Streams Law
MILLCREEK TOWNSHIP SEWER	:	Sewage Facilities Act
AUTHORITY	:	

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 31st day of October, 2003, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department"), Millcreek Township ("Township"), and the Millcreek Township Sewer Authority ("Authority").

Findings

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§691.1-691.1001 ("Clean Streams Law"); the Pennsylvania Sewage Facilities Act, Act of January 24, 1966, P.L. 1535, *as amended*, 35 P.S. §§750.1-750.20a ("Sewage Facilities Act"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. §510-17 ("Administrative Code"); and the rules and regulations promulgated thereunder ("Regulations").

B. The Township is a municipal corporation organized and existing under the laws of the Commonwealth of Pennsylvania, maintaining and operating a sewage collection system in Millcreek Township, Erie County, Pennsylvania. The mailing address of the Township is 3608 West 26th Street, Erie, Pennsylvania 16506.

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C. The Authority is a municipal authority incorporated under the Municipal Authorities Act of 1945, Act of May 2, 1945, P.L. 382 53 P.S. §§301-322, and maintains a mailing address of 3608 West 26th Street, Erie, Pennsylvania 16506. The Authority owns the sewage collection system maintained and operated by the Township in Millcreek Township, Erie County, Pennsylvania. The Authority leases the sewage collection system to the Township.

D. The City of Erie owns a sewage treatment plant which treats sewage from various townships and municipalities in Erie County, including the Township and Summit Township. Summit Township's sewage is conveyed through the Township's sewage collection system to the City of Erie sewage treatment plant. A portion of the sewage from the Township and Summit Township must pass through the Kearsarge pump station to ultimately reach the City of Erie sewage treatment plant. The City of Erie sewage treatment plant discharges treated sewage effluent into Lake Erie, a "water of the Commonwealth" as defined in Section 1 of the Clean Streams Law, 35 P.S. §691.1.

E. On January 6, 1984, Water Quality Management Permit No. 2583409 was issued to the Authority for modifications to the Kearsarge pump station and the construction of a new force main and sanitary sewer.

F. On June 24, 1991, the Authority notified the Department that an unauthorized manual relief valve and overflow line had been installed on a force main immediately down line of the Kearsarge pump station ("Kearsarge Overflow"). Since the time of installation of the Kearsarge Overflow, untreated sewage has been discharged on occasion via the Kearsarge Overflow from a force main exiting the Kearsarge pump station to Walnut Creek, "a water of the Commonwealth," as defined in Section 1 of the Clean Streams Law. The Township and Authority caused the periodic discharges to occur in order to prevent line surcharging and basement backups during heavy precipitation events.

G. On January 7, 1992, the Department, Township, and Authority entered into a Consent Order and Agreement ("1992 COA") to, among other things, remove the Kearsarge Overflow.

H. Paragraph 2.e. of the 1992 COA required the Township and Authority to, among other things, submit a schedule of corrective measures designed to increase capacity of sewage facilities tributary to the Kearsarge pump station and to provide a date when the Kearsarge Overflow would be removed.

I. On March 29, 1993, in a document entitled "Summary, Alternative Selection & Implementation Schedule Sewage Facilities Plan" ("1993 Plan and Schedule"), the Township and Authority provided the information required by Paragraph 2.e. of the 1992 COA to the Department.

J. Pursuant to Paragraph 3 of the 1992 COA, the 1993 Plan and Schedule was incorporated into the 1992 COA as an enforceable obligation of the 1992 COA.

K. The 1993 Plan and Schedule indicates that removal of the Kearsarge Overflow was conditioned upon the Township having full access to the City of Erie's proposed West Side Interceptor. The 1993 Plan and Schedule states that the Kearsarge Overflow would be removed one month after completion of the West Side Interceptor.

L. On or about July 1, 1999, the West Side Interceptor was completed. However, the Authority and Township did not have complete access to the West Side Interceptor until October 2000. Pursuant to the terms of the 1992 COA, the Kearsarge Overflow was to have been removed by November 2000.

M. The 1993 Plan and Schedule included, among other things, the completion of an infiltration and inflow study of the Kearsarge tributary area, a review of the capacity of the Kearsarge pump station and a determination of the appropriate remedy for removal of the Kearsarge overflow.

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Completion of these tasks required coordination and cooperation among the Township, the Authority and the City of Erie.

N. The Township and Authority, in their November 13, 1992, letter, represented that capacities of the Kearsarge pump station and any necessary modifications to the pump station and force main would not be available until the extent of inflow and infiltration in the Kearsarge pump station tributary area and work necessary to abate it was known. The Township and Authority completed several studies, which indicated that the extent of inflow and infiltration in the tributary area was materially greater than had been assumed.

O. The Township and Authority have expanded their regulations regarding inspections and termination of unlawful connections to address inflow and infiltration in the Kearsarge pump station tributary area. Actions by the Township and the Authority have reduced sewage conveyance problems and increased available system capacity in the Kearsarge pump station, resulting in fewer occurrences of residential basement flooding in the tributary area.

P. Substantial inflow and infiltration remains in the areas tributary to the Kearsarge pump station, and the Township and the Authority continue to expand their program of inspections and termination of unlawful connections in the tributary area. The program includes, but is not limited to, inspecting properties and, where warranted, directing termination of unlawful connections to the sanitary sewer system and implementing regulations regarding permits or approvals so as to require identification and/or abatement of inflow and infiltration in tributary areas.

Q. Despite the system improvements described in Paragraph O, above, the Township and Authority continue to allow untreated sewage to be periodically discharged to Walnut Creek via the Kearsarge Overflow and from other areas tributary to the Kearsarge pump station. The Township and the Authority have reported the overflow events detailed on Exhibit A, which is attached and incorporated